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and WildEarth Guardians

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT &)	
WILDEARTH GUARDIANS)	
Plaintiffs,)	
)	
vs.)	Case No. 09-482
)	
BUREAU OF LAND MANAGEMENT,)	COMPLAINT
an agency of the United States, and U.S.)	
DEPARTMENT OF THE INTERIOR,)	
a department of the United States,)	
<u>Defendants.</u>)	

NATURE OF ACTION

1. Defendants Bureau of Land Management *et al.* (BLM) have violated the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, by improperly withholding and failing to disclose information and documents relating to livestock grazing permits and grazing permittees authorized to graze the federal public lands. In response to a FOIA request, BLM improperly claimed that certain information in grazing permits – including the permittees' name and business addresses – is precluded from disclosure.

2. This action requests an order declaring that BLM acted illegally by refusing to disclose the requested information, and this action further seeks an order to enjoin BLM to obey FOIA by immediately providing the information requested by Plaintiffs free of charge.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 2202 (injunctive relief), and 28 U.S.C. § 2201 (declaratory relief).

4. Venue in this Court is proper under 5 U.S.C. § 552(a)(4)(B), as Western Watersheds' principal place of business is in this judicial district.

5. Plaintiffs have exhausted all administrative remedies required under FOIA, 5 U.S.C. § 552(a)(6)(C)(i), prior to bringing this action.

PARTIES

6. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is a non-profit membership organization headquartered at the Greenfire Preserve, located in Custer County, Idaho, having offices and staff in Idaho and several other western states. WWP has over 1400 members, and is dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, including Idaho. WWP is also active in advocating for increased protection for threatened, endangered and sensitive species across Idaho and the west.

7. Western Watersheds Project fulfills its mission in part by educating the public about the natural wonders of the west, and about land, resource and wildlife decisions made by government, private, and other entities that affect the natural environment and wildlife. Its public educational activities include but are not limited to: (1) publishing a newsletter, "Watersheds Messenger"; (2) maintaining its website located at <<http://www.westernwatersheds.org>>; (3) holding its own public meetings and presentations, (4)

participating in other public forums, such as local government hearings; and (5) issuing press releases and communicating with television, radio and print media outlets at the national, state and local levels.

8. WILDEARTH GUARDIANS (Guardians) is a non-profit conservation organization created on January 28, 2008, from the merger of three organizations: Forest Guardians, Sinapu, and the Sagebrush Sea Campaign. Guardians works to protect and restore wildlife and wildlands in the American West, and is headquartered in Santa Fe, New Mexico, with offices in Denver, Colorado, and Phoenix, Arizona. Guardians has approximately 4,500 members that live throughout the country, including Idaho.

9. WWP and Guardians routinely request information through the Freedom of Information Act from the Bureau of Land Management, U.S. Forest Service, and other federal agencies. Upon receipt of the requested information, WWP and Guardians examine this information, organize it into a coherent and easily understandable presentation, and then disseminate this information to inform the public how the agency complies with their respective statutory obligations. WWP and Guardians disseminates this information to the public in many different ways, including: (1) presentation to its members; (2) presentations to the general public; (3) presentation to members of other conservation organizations; (4) participation in numerous conferences and public events across the country; and (5) disseminating information to local and regional news media.

10. WWP and Guardians are adversely affected by the BLM's denial of their information request by preventing plaintiffs and their members from obtaining public records about livestock grazing from BLM. Without this information, WWP and Guardians cannot provide their membership, the general public, or the media with information that is the subject of

the information request – including information concerning who grazes the public lands administered by BLM, how many livestock are grazed, when they are grazed on the public lands – which undermines one of the key goals of these organizations.

11. Defendant BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States within the U.S. Department of the Interior; and is a federal agency charged by law with responding to FOIA requests and FOIA appeals submitted to it.

12. Defendant U.S. DEPARTMENT OF THE INTERIOR is an agency or instrumentality of the United States; and is a federal agency charged by law with responding to FOIA requests and FOIA appeals submitted to it.

STATEMENT OF FACTS

13. FOIA requires federal agencies to provide copies of their records to those who request them. See 5 U.S.C. § 552(a)(3)(A). FOIA includes several exemptions from this requirement, including exemptions for, *inter alia*, documents which are "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6) ("Exemption 6").

14. On August 16, 2007, WWP and Guardians filed a FOIA request with BLM seeking basic information regarding BLM's ongoing management of livestock grazing on public lands, and specifically sought "[c]opies of all current or temporary permits for each and every livestock grazing allotment within the BLM system of lands," including the name, mailing address and other information usually included in the permit.

15. On September 20, 2007, BLM sent to Plaintiffs a preliminary response seeking clarification on the documents requested, and BLM also claimed that it needed more time to respond to the FOIA request. More specifically, BLM stated that it could readily and easily disclose the

information requested electronically – including grazing permits, leases, as well as permittee names, mailing addresses, and other information – and BLM wanted to ensure that electronic information would suffice.

16. On October 2, 2007, Plaintiffs responded to BLM's inquiry, and stated that Plaintiffs "appreciate electronic records," and "will be happy to accept [responsive records] in an electronic format."

17. On May 13, 2008 – fully nine months after Plaintiffs filed the FOIA – BLM provided a further response to Plaintiffs' FOIA request. Unlike its preliminary response – which stated that the grazing permits and other information on permittee names and addresses "can be provided to you electronically once the BLM makes appropriate modifications to its existing database" – BLM's May 13th response refused to disclose this same information, claiming that this information was protected from disclosure under Exemption 6. BLM provided no explanation of its change of course.

18. Indeed, BLM previously disclosed this identical information in response to other FOIA requests, including in response to a FOIA request from researchers investigating the potential outcomes and consequences of a proposed grazing permit buyout program.

19. On July 29, 2008, BLM provided a final response to Plaintiffs' FOIA request. Through the July 29th response, along with the May 13th response, BLM formally denied Plaintiffs' request for grazing permit information, including permittee names and business/mailing addresses.

20. On September 9, 2008, Plaintiffs appealed BLM's invocation of Exemption 6 to shield information certain information from disclosure, including livestock grazing permittee names, business/mailing addresses, and other information.

21. On September 30, 2008, the Office of the Solicitor, U.S. Department of the Interior, denied Plaintiffs' appeal in a one-page letter.

22. To date, Plaintiffs have received no further communication from BLM, and have not received the documents and information improperly withheld.

FIRST CLAIM FOR RELIEF:
VIOLATION OF FOIA: UNLAWFUL USE OF FOIA EXEMPTION 6

23. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

24. Based on the above facts and legal obligations, BLM unlawfully invoked FOIA Exemption 6 in justifying its failure to release information pursuant to Plaintiffs' FOIA Request.

25. BLM's denial of Plaintiffs' FOIA Request violates FOIA, 5 U.S.C. § 552(a), and has deprived Plaintiffs of their right to public documents in the possession of BLM.

SECOND CLAIM FOR RELIEF:
VIOLATION OF APA

26. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

27. BLM's failure or refusal to adhere to FOIA's requirements for the release of information is arbitrary, capricious, an abuse of discretion, not in accordance with law and/or constitutes agency action unlawfully withheld or unreasonably delayed under the APA, which has caused or threatens prejudice and injury to Plaintiffs' rights and interests.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

Plaintiffs Western Watersheds Project and WildEarth Guardians respectfully requests that the Court grant the following relief:

A. Declare that Defendants BLM *et al.* violated FOIA by failing to disclose all relevant information pursuant to Plaintiffs' August 16, 2007 FOIA request;

B. Declare that Defendants BLM *et al.* violated FOIA by invoking Exemption 6 to justify withholding relevant information pursuant to Plaintiffs' August 16, 2007 FOIA request;

C. Order by injunction that Defendants BLM *et al.* immediately provide Plaintiffs with the records they have requested free of charge;

D. Grant Plaintiffs their costs of litigation, including reasonable attorney fees as provided by FOIA and/or any other applicable provision of law; and

E. Provide such other relief as the Court deems just and proper.

Dated this 24th day of September, 2009.

Respectfully submitted,

/s/ Todd C. Tucci

Todd C. Tucci

Attorney for Plaintiffs Western Watersheds
Project and WildEarth Guardians